

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

STEVE SHAPIRO and STEVE SHAPIRO  
MUSIC,

Plaintiffs,

v.

JUPITERIMAGES CORPORATION,

Defendant.

CASE NO. 3:07-CV-5540 PJH

[PROPOSED] ORDER GRANTING  
DEFENDANT JUPITERIMAGES  
CORPORATION'S MOTION TO DISMISS  
THE COMPLAINT

Date: December 12, 2007

Time: 9:00 a.m.

Place: Courtroom 3

Defendant Jupiterimages Corporation ("Jupiterimages" or "Defendant") has filed a motion to dismiss Plaintiff Steve Shapiro's<sup>1</sup> ("Shapiro") Complaint. The Court hereby grants such motion for the following reasons.

Shapiro filed a Complaint in state court seeking declaratory relief. Shapiro merely checked certain boxes on a form complaint. The Complaint provides no facts showing that Shapiro is entitled to relief. Shapiro asserts only that he had a contract with Jupiterimages and he is entitled

<sup>1</sup> Steve Shapiro does business as Steve Shapiro Music.

1 to declaratory relief regarding a dispute regarding indemnity. Shapiro does not state the nature of  
 2 the indemnity dispute. Shapiro does not state any facts regarding why he is entitled to prevail.  
 3 Shapiro does not even state what declaration he is seeking. Accordingly, under the recent United  
 4 States Supreme Court pleading case of Bell Atlantic Corp. v. Twombly, - U.S. -, 127 S.Ct. 1955,  
 5 1964-65, - L.Ed.2d - (2007), the Complaint fails to state a claim.

6 It is a waste of judicial resources to have two federal court lawsuits between the  
 7 same parties involving the same dispute. Shapiro's Complaint in this Court, containing one claim  
 8 declaratory relief, deals solely with Shapiro's contractual obligation in the Asset Purchase  
 9 Agreement ("Agreement") to indemnify Jupiterimages. In contrast, Jupiterimages's Connecticut  
 10 federal court Complaint against Shapiro deals with that issue as well as all other issues in dispute  
 11 between the parties, e.g., claims for fraud, negligent misrepresentation, innocent misrepresentation,  
 12 multiple breaches of contract, violation of the UCC, unfair trade practices and rescission.

13 Declaratory relief is discretionary. Shapiro's Complaint for declaratory relief in this  
 14 Court is inappropriate for three independent reasons.

15 First, the declaratory relief Complaint will not resolve all the disputes between the  
 16 parties and it is improper to use declaratory relief to decide only a sliver of the controversy between  
 17 the parties; in contrast, the Connecticut federal court lawsuit will provide complete relief between  
 18 the same parties. Second, the declaratory relief Complaint seeks to defeat liability in a subsequent  
 19 suit for coercive relief, i.e., damages, and this is an improper use of declaratory relief. Third, the  
 20 declaratory relief Complaint was filed in anticipation of the Connecticut lawsuit, in order to obtain  
 21 a more favorable forum or procedural posture and this is also an improper use of declaratory relief.  
 22 Accordingly, Shapiro's declaratory relief Complaint should be dismissed.

23 IT IS HEREBY ORDERED that Defendant's motion to dismiss the Complaint is  
 24 GRANTED.

25  
 26 Date: December \_\_\_\_\_ 2007

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 HON. PHYLLIS J. HAMILTON